

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

S.B.CRIMINAL REVISION PETITION NO. 271/2005
(Prem Singh Vs. Madhu Bala)

Date of Order : 14/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Pawan Rankawat for the petitioner.
None present for the non-petitioner though served.

BY THE COURT:-

By the instant criminal revision petition under Section 397 Cr.P.C., the petitioner has challenged the order dated 25.08.2004 passed by the Judge, Family Court, Jodhpur (for short 'the trial court' hereinafter) in criminal case No.134/99, whereby the trial court dismissed the application filed by the petitioner under Section 127 Cr.P.C. Aggrieved by the order impugned, the petitioner has filed the instant revision petition.

I have heard learned counsel for the petitioner.
Carefully gone through the order impugned.

It is contended by the learned counsel for the

petitioner that by the compromise order dated 31.5.1995 on an application filed by the non-petitioner wife under Section 125 Cr.P.C., the trial court granted maintenance in favour of non-petitioner wife at the rate of Rs.500/- per month and Rs. 250/- each in favour of minor son and daughter of the petitioner. Thereafter, the non-petitioner became an earning member as she has been serving as a teacher in Shri Dave Bal Vikas Kendra, Uchh Prathmik Vidhyalaya, Mahamandir, Ashok Nagar, Jodhpur and is earning Rs.3000/- per month and therefore, she herself is capable of maintaining herself and is not entitled for maintenance.

The trial court dismissed the application filed by the petitioner on the ground that no documentary evidence was produced. It appears from the order impugned that despite notice by the trial court, the non-petitioner wife failed to appear before the trial court and contest the case and the evidence of the petitioner remained uncontroverted.

Learned counsel for the petitioner submits that before the trial court the petitioner filed an application seeking summoning of record from Shri Dave Bal Vikas Kendra, Uchh Prathmik Vidhyalaya, Mahamandir, Ashok Nagar, Jodhpur where the non-petitioner is presently working as teacher. That

application dated 19.3.2002 has not been decided and straightway the trial court dismissed the application filed by the petitioner under Section 127 Cr.P.C.

Keeping in view the fact that the petitioner has already filed an application seeking summoning of certain documents i.e. record of the school where non-petitioner is serving so that the petitioner can establish by documentary evidence that the non-petitioner is an earning member and earning Rs.3000/- per month, in my view, the trial court fell in error in not considering this aspect of the matter and without deciding the application, it has dismissed the application of the petitioner u/s 127 Cr.P.C. seeking modification of the order dated 31.5.1995.

In this view of the matter, the criminal revision petition deserves to be allowed and the matter deserves to be remanded back to the trial court.

Consequently, the revision petition is allowed. The order impugned dated 25.8.2004 is set aside to the extent granting monthly allowance of maintenance to non-petitioner Smt. Madhu Bala and the matter is remanded to the Family Court, Jodhpur to decide the application filed by the petitioner

seeking summoning of documents from the school in question and pass a fresh order. It is made clear that in any way, the two minor children of the petitioner who have been granted maintenance by the trial court @ Rs. 250/- per month are entitled for the maintenance. The trial court is only to examine whether the non-petitioner wife Smt. Madhu Bala is entitled for maintenance or not.

(H.R.PANWAR),J.

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